S.B.Civil Second Appeal No.178/2005

Sugan Chand vs. Smt. Geeta Devi & anr.

Date : 22.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. SL Jain, for the appellant.

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Heard learned counsel for the appellant.

The brief facts of the case are that the plaintiff/ respondent filed a suit for injunction against the appellant and Municipal Board, Sangaria alleging that the land in question, which was allotted to the appellant by Municipal Board, Sangaria, falls in front of the gate of the plaintiff, therefore, that allotment is illegal and the plaintiff sought relief restraining the appellant from raising any construction over the land. It was a case of the plaintiff that the appellant has been allotted land out of public chowk, therefore also, the allotment of land is illegal.

The trial court vide its judgment and decree dated 23.5.1997 decreed the suit of the plaintiff and the appellate court vide judgment and decree dated 25.8.2003 dismissed the appeal of the appellant. Hence, this second appeal.

According to learned counsel for the appellant, the plaintiff herself sought allotment of land and that

application was rejected by the Municipal Board. The plaintiff is not residing in the house and that fact has been proved by the evidence of the plaintiff herself and, therefore also, the courts below committed error of law in decreeing the suit of the plaintiff for injunction.

Learned counsel for the appellant referred the map Exhibit-5 in support of his case to justify his allotment.

I have considered the submissions of learned counsel for the appellant and perused the record and specially the map Exhibit-5.

It is clear from the map Exhibit-5 itself that the piece of land measuring 10 feet x 50 feet has been allotted to the appellant by the Municipal Board, Sangarai and that land clearly falls in front of the gate of the plaintiff's house. It appears from the plea taken by the appellant in his written statement that when the plaintiff applied for allotment of land that application was rejected by the Municipal Bard on the ground that the defendant's way is opening on this land.

In view of the above and in view of peculiar situation of the house of the plaintiff and defendant, there was no justification for the allotment of land to the defendant by Municipal Board and it is clear from the physical location of the property in dispute that in case, any construction is raised or will be kept, it will cause serious irreparable injury to the plaintiff which will obstruct the

frontage of the house of the plaintiff.

In view of the above, I do not find that the courts below have committed any error of fact or law in decreeing the suit of the plaintiff and in dismissing the appeal of the appellant.

In view of the above, I do not find any merit in this appeal. No substantial question is involved in this appeal.

Accordingly, this second appeal is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya